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March 24, 2008

DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing  
Date of Filing: August 21, 2007  
Case Number: TSO-0532

This Decision concerns the eligibility of XXXXXX (the individual) to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

**I. Background**

The individual is an employee of a DOE contractor. After the individual reported his December 31, 2006 arrest for Driving While Intoxicated (DWI) to DOE, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on February 28, 2007. *See* DOE Exhibit 21. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on May 2, 2007. *See* DOE Exhibit 7. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of

Hearings and Appeals (OHA). The Acting Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his friend of 17 years, his mother, a coworker, a supervisor, an Employee Assistance Program Counselor, and the DOE consultant psychiatrist. The DOE Counsel submitted 23 exhibits prior to the hearing.

## **II. The Notification Letter and the Security Concern at Issue**

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed as alcohol dependent or as suffering from alcohol abuse. DOE Exhibit 1 (citing 10 C.F.R. § 710.8(h) and (j)). This statement was based in part on a May 7, 2007, report by the DOE consultant psychiatrist concluding that the individual suffered from "Alcohol Abuse." DOE Exhibit 7. The Notification Letter also alleged the following: (1) on December 31, 2006, the individual was arrested and charged with DWI; he failed the breathalyzer test and admitted to police that he had been drinking; (2) during his interview with the DOE consultant psychiatrist, the individual admitted to driving after drinking about twice a year; (3) despite being told during an April 19, 2006, PSI that the use of alcohol to excess raises a security concern, the individual continued to drink, sometimes to excess, and was subsequently arrested for DWI; (4) in July 1996, the individual was sent home from his place of his employment after his supervisor accused him of smelling like alcohol, and the individual admitted to drinking seven or eight beers the previous night; and (5) the individual admitted to drinking to the point of intoxication in the past.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, certain mental conditions, such as Alcohol Abuse, can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

## **III. Findings of Fact**

The relevant facts in this case are not in dispute. The individual does not have a history of frequent problems stemming from his use of alcohol. In 1995 or 1996, while the individual was employed at a prison, he reported to work after drinking the previous night. Hearing Transcript

[hereinafter Tr.] at 69; DOE Exhibit 22 at 37-38. When his supervisor smelled alcohol on his breath, he was sent home and suspended for three days without pay. Tr. at 48-50; DOE Exhibit 22 at 35.

The next alcohol-related incident occurred on December 31, 2006. Prior to leaving a party, the individual had consumed four to five beers over a three-hour period. *Id.* at 68-69. He was driving through an intersection, when another car “clipped” his vehicle. A police officer who happened to be nearby stopped the individual’s vehicle and gave the individual a field sobriety test, which the individual believes he failed. After the police officer transported him to the police station, he was given a breathalyzer test, which he also failed. Tr. at 54-56.<sup>1</sup> After reporting the arrest to his employer on January 4, 2007, DOE Exhibit 13, the individual decided on his own to contact his employer’s Employee Assistance Program (EAP). *Id.* at 81.

#### **IV. Analysis**

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual’s eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern in this case has been resolved.

##### **A. Regulatory Standard**

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether granting or restoring access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

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<sup>1</sup> The record does not indicate the exact blood alcohol content measured by the breathalyzer, though the legal limit in the jurisdiction of his arrest was .08%. Tr. at 55; *see also* DOE Exhibit 21 at 12 (individual states in February 28, 2007, PSI that “it was a .1 something, I don’t know the exact number, but it was over a .08”). An arraignment sheet in the record indicates that the individual was charged with DWI and released after posting a \$500.00 bond. DOE Exhibit 15. At the time of the hearing, the case was still pending. Tr. at 55.

“In resolving a question concerning an individual's eligibility for access authorization,” I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). Considering all of the above factors, I find that the nature, extent, and seriousness of the conduct, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, and the likelihood of recurrence are the most relevant factors in this case, with the last being the critical issue in this case.

## **B. The Diagnosis of Alcohol Abuse**

In addition to there being no dispute as to the relevant facts in this case, there is no dispute as to the diagnosis of Alcohol Abuse under the criteria set forth in the Diagnostic and Statistical Manual, 4<sup>th</sup> Ed., Text Revision (DSM-IV-TR). Both experts who testified at the hearing, the DOE psychiatrist and the Employee Assistance Program Counselor are in accord on this matter. Tr. at 82, 98. Thus, the remainder of this decision will focus on whether the legitimate security concerns raised by this diagnosis and the individual's past problematic use of alcohol have been resolved.

## **C. Whether the Security Concerns Raised Have Been Resolved**

### **1. Testimony Regarding the Steps Taken by the Individual toward Rehabilitation and Reformation from Alcohol Abuse**

The individual testified at the hearing that he has not consumed alcohol since his December 31, 2006, DWI arrest, with the exception of one occasion in March 2007, when he drank “four or five . . . cups of draft beer” over the course of a day at an outdoor music festival. *Id.* at 71-72; *id.* at 32 (testimony of friend who was with him on this occasion that the individual “maybe drank four or five beers for the whole day”). This testimony was corroborated by the other witnesses who testified at the hearing, including his mother, a coworker with whom the individual socialized outside of work, and a former coworker who has been the individual's friend for 17 years. *Id.* at 12, 16, 32.

The individual testified that he understands why the DOE has concerns with his past use of alcohol, and that he has used his present situation, having had his clearance suspended, as an opportunity to learn about himself and make himself better. *Id.* at 66-67. The supervisor of the

individual since his clearance was suspended, who has worked with “a lot of employees” whose clearances have been suspended, stated at the hearing that she has declined to testify on behalf of other employees in Part 710 proceedings, but had no problem doing so on behalf of the individual. She testified that the individual’s positive attitude and performance compared favorably to others in the individual’s situation, whom she described as “disgruntled” and “unhappy”. *Id.* at 24-26.

The individual also stated at the hearing that he has no intention of drinking in the future. *Id.* at 67.

I'm not going to drink anymore. I mean, like I say, it's not worth it. I mean, this -- this DWI has affected more than just my job. I mean, it's affected my TCLEOSE. I may lose my TCLEOSE.

Q. What's that?

A. My police officer certification, because I am a certified police officer. I've got my credentials and everything, and this could affect that, also. I mean, I could lose my peace officer's license over this, also. It's not just my job. It will affect my whole life, not just here at work.

*Id.* at 77-78. His mother also testified that she believed it was his intention to not drink in the future, as did his friend of 17 years, who testified that the individual seems sincere in his intention and that he is confident that his friend will not drink in the future. *Id.* at 19, 32-33.

## **2. Expert Testimony as to the Individual’s Progress in Recovery and the Risk of Relapse**

While the lay witnesses at the hearing believe that the individual will not return to drinking, I give more weight on this issue to the opinions of the two experts who testified at the hearing, the individual’s EAP counselor and the DOE psychiatrist. Both of these experts are uniquely qualified to address the regulatory factors discussed above, including the ultimate issue in this case, the “likelihood of recurrence,” *i.e.*, the likelihood that the individual will return to using alcohol in the future.

### **a. The Testimony of the Individual’s EAP Counselor**

As noted above, the individual, after reporting his DWI arrest to his employer on January 4, 2007, took the initiative in working toward rehabilitation or reformation by contacting his employer’s Employee Assistance Program. The individual’s EAP counselor, a Licensed Professional Counselor and Licensed Chemical Dependency Counselor, testified that the individual “self-referred and made an appointment and came in.” *Id.* at 81. At their first meeting on February 28, 2007, the EAP counselor recommended that the individual attend an alcohol

education class, which met for 16 hours over two days, and which he completed. *Id.* at 66, 83, 87-88. She also recommended that he abstain from alcohol. *Id.* at 87.

In May 2007, after the EAP counselor learned that he drank alcohol on one occasion in March 2007, she recommended that the individual participate in an “intensive outpatient program” which met daily from Mondays through Thursdays for a total of approximately 50 hours over five weeks. *Id.* at 61-62, 83, 88. This program was followed by “aftercare,” which consists of weekly meetings that the individual was still attending at the time of the hearing. The EAP Counselor oversees both the intensive outpatient and aftercare program, and stated that the individual’s participation in aftercare has been “regular” and that “he has participated well, according to the reports that I’ve received from the treating staff.” *Id.* at 83. Finally, the EAP counselor personally meets with the individual on a monthly basis.

The EAP counselor agreed with the treatment recommendations of the DOE psychiatrist, which are discussed below. She believes the individual has benefited from the treatment he has received up to the time of the hearing, and recommended that the individual continue to attend weekly aftercare sessions and meet with her monthly until he has achieved one year of abstinence. *Id.* at 85-86, 91. The EAP counselor recommends that the individual abstain from using alcohol in the future, and testified that “his ability to maintain abstinence is good.” *Id.* at 92-93.

#### **b. The Testimony of the DOE Psychiatrist**

In her report dated May 7, 2007, the DOE psychiatrist opined that the individual had not shown adequate evidence of rehabilitation or reformation at the time of the psychiatric evaluation, because the individual had not completed substance abuse counseling and “did not show convincing evidence that he had been educated enough on the risks related to excessive alcohol use or alcohol abuse.” DOE Exhibit 7 at 16. The DOE psychiatrist recommended in the psychiatric report that the individual “complete a minimum of 50 hours of a professionally led substance abuse treatment program, for a minimum of six months, including what is called ‘aftercare’ and be completely abstinent during the duration of the program.” *Id.*

At the hearing, the DOE psychiatrist was asked about the fact that the individual has consistently maintained, including at the hearing in this matter, that he does not have a “problem with alcohol,” though he acknowledges that alcohol has “obviously” caused problems in his life. Tr. at 68. For example, in his hearing testimony, the individual stated that “it’s not just black and white as far as people having alcohol problems. . . . [W]hen you can’t control your drinking is pretty much what it boils down to, is where you have to have it even regardless of what the circumstances are.” *Id.* at 79.

The DOE psychiatrist acknowledged that it “is troubling when someone who has had a DWI will continue to insist that they do not have a problem.” *Id.* at 100. However, the psychiatrist did not characterize the individual’s attitude as one of denial, but rather a matter of how the individual

defines having an alcohol “problem,” taking into account the individual’s education, intellectual capacities, social background, and cultural factors.

I believe this is what he said today when you asked him, he said, "Well, it's not just black and white. When you cannot control your drinking, when you have to have it" -- well, that's what he considered a problem.

....

[I]f that is his definition of a problem, then he's correct, he does not have a problem, because we've already established that his problem is not that kind. The problem that he was referring to is someone with alcohol dependence.

*Id.* at 100-01. The DOE psychiatrist concluded that she did not “think that his words truly reflect his attitude. I think, in this particular case, the [individual]'s behavior might reflect more his true attitude. In other words, the fact that he has chosen not to drink, . . .” *Id.* at 101.

After hearing the testimony from all of the other witnesses at the hearing, including that of the EAP counselor, the DOE psychiatrist testified that the individual “definitely” had shown “sufficient evidence for me to conclude that he has adequate evidence of rehabilitation and reformation.” *Id.* at 108. As for the individual’s prognosis, the psychiatrist opined that the individual “has a low probability of relapse in the immediate foreseeable future.” *Id.* at 109.

#### **D. Hearing Officer Evaluation of Evidence**

The decision of a hearing officer in a Part 710 case is a predictive assessment, in this case an assessment of the likelihood that the individual will use alcohol in the future, and that such use will negatively impact his judgment and reliability. It is clear to me that the individual and his family and friends sincerely believe that he will not return to drinking. Although such a positive outlook might be expected from those close to the individual, their opinions are bolstered by that of both the EAP counselor and the DOE psychiatrist, whose testimony I found to be well-founded and persuasive.

As noted above, the individual does not have a long history or ingrained pattern of alcohol-related problems in his past. There are, in fact, only two alcohol-related incidents, separated by over a decade, the most recent being his December 2006 DWI. Moreover, it is to the individual’s credit that, as discussed above, he proactively sought out the help of his employer’s Employee Assistance Program immediately after reporting his DWI, and has by all accounts been very positive and forthright in his dealings with DOE security and his employer. He has followed the treatment recommendations of the EAP counselor and the DOE psychiatrist, including his completion of an intensive outpatient treatment program, consistent attendance at aftercare sessions, and monthly meetings with the EAP counselor. As of the date of the hearing in this case, he had achieved eight months of sobriety, two months longer than the minimum recommended by the DOE psychiatrist, who concluded that he “definitely” had shown adequate

evidence of rehabilitation and reformation. Based on all of the above, I am of the opinion that the risk of relapse for the individual going forward is low enough to warrant restoration of his access authorization.

## **V. Conclusion**

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for access authorization. However, I find that the concern raised by that evidence had been sufficiently mitigated. I therefore conclude, "after consideration of all the relevant information, favorable and unfavorable," that restoring the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a).

Steven J. Goering  
Hearing Officer  
Office of Hearings and Appeals

Date: March 24, 2008